IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 23750 of 2007(B)

AGAINST THE ORDER IN IA 451/07 IN
AS.19/2007 of SUB COURT, SULTHAN BATHERY
OS.280/2004 of MUNSIFF MAGISTRATE, SULTHAN BATHERI

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PETITIONER:

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1. P.K.ABDURAHIMAN, S/O.AHAMMAD KUNHU,
   AGED 57 YEARS, RESIDING AT PULIYADENKUNNEL HOUSE,
   PURAKKADI AMSOM AND DESOM, KAKKAVAYAL,
   SULTAN BATHERY TALUK, WAYANAD DISTRICT.

2. MARIYAM, W/O.P.K.ABDURAHIMAN,
   RESIDING AT PULIYADENKUNNEL HOUSE,
   PURAKKADI AMSOM AND DESOM, KAKKAVAYAL,
   SULTAN BATHERY TALUK, WAYANAD DISTRICT.

3. P.K.AZEEZ, S/O.P.K.ABDURAHIMAN,
   RESIDING AT PULIYADENKUNNEL HOUSE,
   PURAKKADI AMSOM AND DESOM, KAKKAVAYAL,
   SULTAN BATHERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

P.K.MOHAMMAD HAJI, S/O.AHAMMAD KUNJU,
RESIDING AT PULIYADENKUNNEL HOUSE,
PURAKKADI AMSOM AND DESOM, KAKKAVAYAL,
SULTHAN BATHERY TALUK, WAYANAD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 23750 OF 2007 B

Dated this the 3rd August, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Subordinate Judge, Sulthan Bathery in I.A.451/07 in A.S.19/07. The original suit was decreed by granting a decree for mandatory injunction to remove the obstruction made with respect to a pathway and for a permanent injunction. The defendants preferred an appeal and prayed for a stay and the court below did not entertain that plea and rejected the prayer for stay. It is against that order the present writ petition is filed. There is one decree staring at the face of the appellant and there is application of mind by the appellate Judge regarding granting of stay at that stage. So this court sitting in the writ jurisdiction cannot re-appraise the fact to arrive at a different decision. Therefore, the only possible remedy that can be given to the writ petitioner is by way of direction to the Subordinate Judge, Sulthan Bathery to dispose of A.S.19/07 pending before that court, as expeditiously as possible. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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